

**NOTIFICATION OF RIGHTS OF THE PARENTS, INDIAN CUSTODIANS,
GUARDIANS OR LEGAL CUSTODIANS OF INDIAN CHILDREN UNDER THE
FEDERAL INDIAN CHILD WELFARE ACT, 25 U.S.C. Sec 1901, ET Seq.
ICWA FACT SHEET FOR PROFESSIONALS**

TRANSFER OF PROCEEDINGS

Either parent, the Indian custodian, or the Indian child's tribe may request and the court, in the absence of good cause to the contrary, shall transfer the proceedings to the jurisdiction of the tribe, absent objection by either parent, or declination by the tribal court of such tribe.

INTERVENTION

The Indian custodian and the Indian child's tribe have the right to intervene at any point in the proceeding.

NOTICE

The parent, Indian custodian and the Indian child's tribe shall be notified by registered mail, return receipt requested, of the pending proceeding and of their right of intervention. If the identity or the location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior who shall have **15** days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least **10** days after the receipt of the notice by the parent or Indian custodian and the tribe or the Secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to **20** additional days to prepare for such proceeding.

APPOINTMENT OF ATTORNEY

If the Court determines the parent or Indian custodian cannot afford an attorney, as determined by Chief Justice Directive 04-05, it must appoint one to represent each of them.

EXAMINATION OF REPORTS OR OTHER DOCUMENTS

Each party in the proceeding has the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be raised.

REMEDIAL SERVICES AND REHABILITATIVE PROGRAMS-ACTIVE EFFORTS

The Court must be satisfied that **ACTIVE EFFORTS** have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family and that these efforts have proved unsuccessful.

FOSTER CARE PLACEMENT ORDERS-BURDEN OF PROOF AND NEED FOR EXPERT TESTIMONY

In order to make a foster care placement the Court must determine **BY CLEAR AND CONVINCING EVIDENCE**, including testimony of qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in **SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE CHILD**.

TERMINATION OF PARENTAL RIGHTS ORDERS- BURDEN OF PROOF AND NEED FOR EXPERT TESTIMONY

In order to terminate parental rights, the Court must determine **BY EVIDENCE BEYOND A REASONABLE DOUBT**, including testimony of qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

VOLUNTARY TERMINATION

If any parent or Indian custodian voluntarily consents to a foster placement or to termination of parental rights the Court is obligated to follow the procedures set forth in 25 U.S.C. Section 1913.

PLACEMENT OF INDIAN CHILDREN

In adoptive placements of an Indian child the Court shall give preference, in the absence of good cause to the contrary, to a placement with:

- 1) a member of the child's extended family,
- 2) other members of the child's tribe; or
- 3) other Indian families.

Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his/her special needs, if any, may be met. The child shall also be placed within a reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or pre-adoptive placement, the Court shall give preference, in the absence of good cause to the contrary, to a placement with:

- 1) a member of the Indian child's extended family,
- 2) a foster home licensed, approved, or specified by the Indian child's tribe,
- 3) an Indian foster home licensed or approved by the authorized non-Indian licensing authority; or
- 4) an institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable, to meet the Indian child's needs.

Where appropriate, the Indian child or his/ her parents' preference shall be considered.

RETURN OF CUSTODY

A biological parent or prior Indian custodian may petition for return of custody after a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child. The Court shall grant the petition unless there is a showing that such return of custody is not in the best interest of the child.

Whenever an Indian child is removed for a foster care home or institution for the purpose of further foster care, pre-adoptive or adoptive placement, such placement shall be in accordance with the provisions set forth above except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

APPLICATION BY SUBJECT OF ADOPTIVE PLACEMENT

An Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement may apply and the Court shall inform the individual of the tribal affiliation, if any, of the individuals' biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

EMERGENCY REMOVAL OR PLACEMENT OF A CHILD

Nothing listed above shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation but temporarily located off the reservation from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under state law, in order to prevent imminent physical damage or harm to the child.

SECRETARY OF INTERIOR'S DISCLOSURE OF INFORMATION

The adoptive or foster parents of an Indian child, or an Indian tribe, may request and the Secretary of the Interior shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership.